

# EXHIBIT “B”

judgment debtor exam

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1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF HAWAII  
3   WAYNE BERRY, a Hawaii   )  
4   citizen                   ) CIVIL NO. CV03-00385 SOM-LEK  
5                   Plaintiff,   ) (Copyright)  
6                   vs.        )  
7   HAWAIIAN EXPRESS       )  
8   SERVICE, INC, et al.,   )  
9                   Defendants.   )  
                  \_\_\_\_\_)

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12

13                   DEPOSITION OF WAYNE BERRY

14   Taken on behalf of the Defendants C&S Logistics of  
15   Hawaii, LLC, C&S Wholesale Grocers, Inc., C&S  
16   Acquisitions, LLC, ES3, LLC and Richard Cohen, at the  
17   offices of Kobayashi Sugita & Goda, 999 Bishop  
18   Street, Suite 2600, Honolulu, Hawaii, on Monday,  
19   August 13, 2007, commencing at 11:31 a.m. Pursuant to  
20   Notice.

21

22

23

24   Reported by:  
25   Priscilla Gonzaga, CSR #127  
Notary Public, State of Hawaii

□

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1   APPEARANCES:

2   For the Plaintiff:

3 judgment debtor exam  
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 6 Honolulu, Hawaii 96813

7 For the Defendants C&S Logistics of Hawaii, LLC, C&S  
 8 Wholesale Grocers, Inc., C&S Acquisitions, LLC, ES3,  
 9 LLC and Richard Cohen:

10 LEX R. SMITH, ESQ.  
 11 Kobayashi Sugita & Goda  
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14 For the Defendant Guidance Software:

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21 For the Defendant Brian Christensen:

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1 I N D E X

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3	MR. SMITH	4
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12           A     I don't <sup>judgment debtor exam</sup> know. You tell me.  
13           Q     Okay. You're not aware of one. Okay.  
14                     So I don't forget, I would like to make the  
15 document that you brought with you an exhibit so  
16 let's make that next in order, the document that you  
17 brought with you Bates stamped.  
18                     (Exhibit D marked for identification.)  
19           MR. HOGAN: Can we just go off the record  
20 for a second?  
21                     (Off the record colloquy.)  
22           MR. HOGAN: Go back on.  
23           Q     (By Mr. Smith) Okay. E is the document that  
24 I'm giving to the court reporter.  
25           A     Okay.

□

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1           Q     My time is limited so I'm going to try to  
2 ask very specific questions and I'll appreciate very  
3 specific responses.  
4           A     I'll try.  
5           Q     Okay. I'd like to start with number 1 on  
6 Exhibit E which refers to something called USAGE.EXE.  
7 Are you the author of that item?  
8           A     Yes.  
9           Q     Have you ever been paid any money for  
10 authoring it?  
11          A     I think so.  
12          Q     who made the payment?  
13          A     I think it was probably IPC Enterprises.  
14          Q     How much was the payment?  
15          A     I have no idea. It was a long time ago.  
16          Q     when was the payment made?

judgment debtor exam

17 A I have no idea.  
18 Q When was the last time you received any  
19 payment from IPC Enterprises for this item number 1?  
20 A I have no idea.  
21 Q Was it more than ten years ago?  
22 A Yes.  
23 Q Do you have any expectation that you're ever  
24 going to receive any money, any more money for item  
25 number 1?

□

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1 A There's always a chance.  
2 Q Has anyone ever offered you -- other than  
3 IPC Enterprises, has anyone ever offered you any  
4 money for item number 1?  
5 A No.  
6 Q And when I say offered you money, I mean for  
7 a license or to buy it from you or for any other --  
8 any other way connected to this item USAGE.EXE?  
9 A No.  
10 Q Item number 2 refers to something called  
11 Except.exe. Are you the author of Except.exe?  
12 A Yes.  
13 Q Have you ever been paid any money for  
14 Except.exe?  
15 A Yes.  
16 Q Who was the payer?  
17 A IPC Enterprises.  
18 Q Anybody besides IPC Enterprises ever paid  
19 you anything for Except.exe?  
20 A Not that I can recall.

21 Q judgment debtor exam  
when was the payment from IPC Enterprises?  
22 A I don't know.  
23 Q Was it more than ten years ago?  
24 A Yes.  
25 Q Has anyone offered you any money for

□

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1 Except.exe whether the use or licensing or ownership  
2 of it other than IPC?  
3 A No.  
4 Q Where is IPC Enterprises located?  
5 A They were in Hawaii.  
6 Q where are they now?  
7 A I have no idea.  
8 Q who was in charge of IPC Enterprises?  
9 A when?  
10 Q when you were doing business with them.  
11 A Jeff Itoman.  
12 Q Item number 3, MVRAPP.EXE. Have you ever  
13 been paid any money for MVRAPP.EXE?  
14 A Yes.  
15 Q who made the payment?  
16 A IPC.  
17 Q How much did they pay?  
18 A I don't know.  
19 Q Was the payment made more than ten years  
20 ago?  
21 A Yes.  
22 Q Since -- have you ever been offered anything  
23 for MVRAPP.EXE by anyone other than IPC?  
24 A No.  
25 Q Have you ever attempted to market the first

judgment debtor exam

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1 three items that we've talked about to anyone other  
2 than IPC?

3 A I've made an attempt to market derivatives  
4 of those.

5 Q Has anyone ever agreed to pay you anything  
6 for derivatives of those?

7 A I don't know.

8 Q Okay. who have you offered -- who have you  
9 offered derivatives of those to?

10 A I'm not sure. I can just remember using  
11 portions of the code in making derivatives. I  
12 just -- I can't recall at this point what I used or  
13 whether they turned into a sales product or not or  
14 who it was.

15 Q So you can't remember --

16 A No.

17 Q -- receiving any money for those other than  
18 what you got from IPC?

19 A No, not specifically.

20 Q Are you the author of CLKDDE.EXE?

21 A Yes.

22 Q Have you ever been paid any money for  
23 CLKDDE.EXE?

24 A Yes.

25 Q By whom?

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1 A IPC Enterprises.

2 Q How much were you paid?

3           A     I have judgment debtor exam  
                  no idea.

4           Q     Was it more than ten years ago?

5           A     Yes.

6           Q     Has anyone offered you anything for it since  
7 then?

8           A     Same answer. There's been derivatives made  
9 and I don't know if there's something I sold or not.

10          Q     The answer is maybe but you don't know?

11          A     That's correct.

12          Q     CLKCOM.EXE, are you the author?

13          A     Yes.

14          Q     Have you ever been paid anything for it?

15          A     Yes.

16          Q     Who paid you?

17          A     IPC Enterprises.

18          Q     How much did they pay you?

19          A     I don't know.

20          Q     Was the payment more than ten years ago?

21          A     Yes.

22          Q     And is it correct that you may have  
23 attempted to market it since that time or a  
24 derivative of it but you don't know whether you ever  
25 received any money for it?

□

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1           A     That's correct.

2           Q     Number 6, TIMEDB2.DDL. Are you the author?

3           A     Yes.

4           Q     Have you ever been paid anything for it?

5           A     Yes.

6           Q     By whom?

7           A     IPC Enterprises.



judgment debtor exam

8 Q Was the payment more than ten years ago?

9 A Yes.

10 Q How much was it?

11 A I have no idea.

12 Q Is it correct that although you may have  
13 attempted to market a derivative of TIMEDB2.DDL, you  
14 have no knowledge whether you've ever received any  
15 income from it from anyone other than IPC?

16 A No. I actually -- that's a time accounting  
17 database structure for time clocks. And I used a  
18 derivative of this structure at API for the terminals  
19 to record time. There was no separate charge and  
20 there was no separate money recovered from using that  
21 but I did implement a separate time clock system  
22 using this.

23 Q Okay. So you obviously used API?

24 A Yes.

25 Q Did API pay you anything for it?

□

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1 A No. It was just something I put out to make  
2 the work easier.

3 Q Other than IPC and API, have you received  
4 any money from anybody else for TIMEDB2.DDL?

5 A No. As I mentioned API did not pay any  
6 money directly for this.

7 Q Next one, PAYMENT.EXE. Have you ever -- are  
8 you the author of PAYMENT.EXE?

9 A Yes.

10 Q Have you ever received any money for it?

11 A Yes.

12 Q judgment debtor exam  
who paid you the money?  
13 A That would have been IPC Enterprises.  
14 Q How much were you paid?  
15 A I don't know.  
16 Q Was the payment over ten years ago?  
17 A Yes.  
18 Q Since that time, is it correct that you're  
19 not able to identify anybody who's paid you anything  
20 for the use of PAYMENT.EXE?  
21 A That's correct.  
22 Q Next one, MASTER.EXE. Are you the author?  
23 A I think so but I don't -- just going by the  
24 record here, I don't remember this program.  
25 Q Is it correct that you have no memory of

□

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1 ever receiving any money as a result of authoring  
2 MASTER.EXE?  
3 A I'm not sure 'cause I don't remember the  
4 program specifically.  
5 Q Okay. So you just don't know if you ever  
6 made any money from that program?  
7 A Right.  
8 Q Number 9. Are you the author of VIEW.EXE?  
9 A I think so but now you're getting into a  
10 period of time I'm not sure which programs they are  
11 without -- I can't remember which projects they were  
12 attached to.  
13 Q Okay. So as you sit here today, you have no  
14 knowledge of ever receiving any income from VIEW.EXE?  
15 A I just don't recall. I'd have to look at  
16 the program and see what the project was.

judgment debtor exam

17 Q Okay. But like I say, as you sit here  
18 today, you don't know?

19 A I can't recall.

20 Q Is it correct that in the last ten years,  
21 you have not received any money from VIEW.EXE?

22 A I can't recall.

23 Q Number 10, CAPTURE.EXE. Are you the author?

24 A Again, that's one of these programs I can't  
25 place to the project right now.

□

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1 Q So you don't know what that is or whether  
2 you ever made any money from it?

3 A Right.

4 Q Number 11, MVRDB.DBD. Are you the author?

5 A Yes.

6 Q Have you ever made any money from it?

7 A Yes.

8 Q Who was the payer?

9 A IPC Enterprises.

10 Q How much did they pay you?

11 A I don't know.

12 Q Was it more than ten years ago?

13 A Yes.

14 Q Have you ever received any money from it  
15 since that time?

16 A Not that I can recall.

17 Q Number 12, CALL.EXE. Are you the author?

18 A Yes.

19 Q Have you ever received any money from it?

20 A Yes.

21           Q     How much?<sup>judgment debtor exam</sup>  
22           A     I have no idea.  
23           Q     Who's the payer?  
24           A     IPC Enterprises.  
25           Q     How long ago was the payment?

□

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1           A     I have no idea.  
2           Q     Was it over ten years ago?  
3           A     Yes.  
4           Q     Since that time, have you received any  
5 money -- since the time you received something from  
6 IPC, have you received any money related to CALL.EXE?  
7           A     No.  
8           Q     Number 13, UPDATE: KNB version 4. Are you  
9 the author?  
10          A     I think so.  
11          Q     Have you ever received any money for it?  
12          A     I think so.  
13          Q     Who was the payer?  
14          A     I think it was probably IPC.  
15          Q     Was the payment over ten years ago if it was  
16 made?  
17          A     Yes.  
18          Q     And since that time, have you received any  
19 money related to UPDATE: KNB version 4.0?  
20          A     No.  
21          Q     Number 14, STATUS: KNB version 4.0. Are you  
22 the author?  
23          A     I think so.  
24          Q     Have you ever received any money for it?  
25          A     I think so.

judgment debtor exam

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1 Q From whom?

2 A It would be IPC.

3 Q Do you know how much?

4 A No.

5 Q Have you received any money related to

6 STATUS: KNB version 4.0 since the payment you

7 received from IPC?

8 A I don't think so.

9 Q Number 15, FlemingPO. I take it you agree

10 you're the author of that?

11 A Yes.

12 Q Have you ever received any money from anyone

13 for the use of FlemingPO?

14 A I guess. The Hawaiian Express settlement,

15 would that be considered?

16 Q Okay. You can --

17 A Kind of like loss license fees.

18 Q Okay. So we're aware of the HEX settlement.

19 Any other money you've ever received in connection

20 with FlemingPO?

21 A Not that I'm aware of.

22 Q Have you made any efforts to market

23 FlemingPO to anyone?

24 A Yeah. I made derivatives and -- sure.

25 Q And has any of those ever resulted in any

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1 income to you?

2 A A derivative of it is -- I use in -- part

judgment debtor exam  
3 and parcel in the small section today in Y. Hata's  
4 stuff.

5 Q Okay.

6 A Some of the derivatives I've used in those  
7 test beds with Horizon I told you about.

8 Q But you didn't get any money from what you  
9 did with Horizon?

10 A No, I didn't. I'm just thinking out loud.

11 Q That's fine.

12 A And even with Y. Hata, I'm only getting --  
13 point to it and say that's specifically not a dollar  
14 for doing, you know, something like that. It's all  
15 kind of bundled in.

16 Q Okay. But your testimony is that something  
17 that's derived from FlemingPO is part of what you're  
18 licensing to Y. Hata?

19 A Very small piece, yeah.

20 Q LOOKUP, if you will, we're on number 16.

21 LOOKUP: KNB version 4.0.

22 A Okay.

23 Q Are you the author?

24 A I think I am.

25 Q Have you ever received any money for it?

□

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1 A I think so.

2 Q From whom?

3 A Be IPC.

4 Q And the payment was received over ten years  
5 ago?

6 A Yes.

7 Q And you don't know how much it was?